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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x  
3 FCS ADVISORS, LLC

4 Plaintiff

5 v.

21 Civ. 06995 (PKC)  
Oral Argument

6 THEIA GROUP, INC.,

7 Defendant

8 -----x

New York, N.Y.  
October 20, 2021  
11:00 a.m.

10 Before:

11 HON. P. KEVIN CASTEL

12 District Judge

13 APPEARANCES

14 STEPTOE & JOHNSON LLP  
15 Attorneys for Plaintiff  
16 CHARLES A. MICHAEL  
17 FILBERTO AGUSTI  
JEFFREY REISNER  
EVAN GOLDSTICK

18 FRIED FRANK HARRIS SHRIVER & JACOBSON  
19 Attorneys for Defendant  
MOTTY SHULMAN  
20 ROBIN HARRIS  
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21 SEQUOR LAW PA  
22 Attorneys for Intervenor  
GREGORY S. GROSSMAN

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(In open court; case called)

DEPUTY CLERK: For the plaintiff.

MR. MICHAEL: Good morning, your Honor. Charles Michael from Steptoe & Johnson, on behalf of the plaintiff.

THE COURT: Good morning, Mr. Michael.

MR. MICHAEL: With me are my partners, Filberto Agusti and Jeffrey Reisner, also from Steptoe & Johnson.

THE COURT: Good morning.

And for the defendants.

MR. SHULMAN: Good morning, your Honor. Motty Shulman from Fried Frank, along with Robin Henry and Christopher Bell.

THE COURT: Good to see you again. You're on Hanks, is it?

MR. SHULMAN: Yes, your Honor.

THE COURT: Keep your mask up. That's the rules of the road around here.

So, I have been through the submissions. From the movants, I have Manuel Colon declaration, initial one; the Michael declaration; I have the Gorman declaration, Reid Gorman in opposition; I have another declaration from you, Mr. Michael and from Mr. Colon.

What, if anything else, does the plaintiff wish the Court to consider of an evidentiary nature?

MR. MICHAEL: Nothing, your Honor. It's all in the record.

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1 THE COURT: Thank you.

2 Mr. Shulman.

3 MR. SHULMAN: Nothing else, your Honor.

4 THE COURT: All right. So the record is closed. And  
5 I hope we're not going to start from scratch because I've done  
6 my homework, and I'm not approaching this from the standpoint  
7 of somebody just getting up to speed. I know about the  
8 licenses. I know about the obligation to launch half of the  
9 satellites by, I believe, it's May 2025. I know about the  
10 initial notes extended. I know about the decision to extend  
11 the maturity date on the first note. I know about the third  
12 amendment. I know about Mr. Leeds and Mr. Leeds work with  
13 Brevet and Mr. Leeds hiring by Theia. I know about, from what  
14 I understand, the CEO of Theia was a Mr. Olson, and he was  
15 replaced by a Mr. O'Neill, and I gather Mr. O'Neill is no  
16 longer with the company. I know about Mr. Carroll as the CFO  
17 who was replaced by Steven Bucher, who has now been replaced, I  
18 guess, by Reid Gorman.

19 So, I know quite a bit, but I will give each side an  
20 opportunity to make their arguments and proceed. I am going to  
21 be interested in knowing from the defendant what the status of  
22 things are. They have GH Partners, Lazard Asset Management,  
23 Alix Partners, TG Capital Partners. I'm kind of curious how  
24 you're paying for that. You're being sued by a landlord.  
25 You're being sued by two aircraft companies. But I'll find

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1 out. I'll find out if you have a CEO.

2 So, the plaintiff may proceed.

3 MR. MICHAEL: Thank you, your Honor.

4 THE COURT: Can you hand me a copy of whatever you're  
5 showing?

6 MR. MICHAEL: Sure.

7 THE COURT: You don't have to do it this minute, but I  
8 would appreciate receiving it.

9 MR. MICHAEL: I will give hard copies at the end to  
10 everyone and, your Honor, I take your words to heart that  
11 you've read everything, so I will give what I will call the  
12 expedited version of today's presentation. We represent the  
13 plaintiff FCS, which commonly goes by the name Brevet, so we  
14 are referred to Brevet in the papers, so that's what I'll use.

15 I want to start with the big picture, and the one  
16 overarching fact that I think looms large over all of the  
17 others is that Theia is in default. The default is  
18 indisputable. Brevet advanced hundreds of millions of dollars.  
19 The maturity to date to pay that all back was June 29 of this  
20 year, and Theia paid nothing.

21 We are in a situation that is a calamity that cannot  
22 persist, and there are four basic reasons why the remedy for  
23 this calamity is a receiver. The first is that that was the  
24 agreed remedy in the loan documents. The second is that Theia  
25 has no money or plan to dig itself out of the hole.

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1 THE COURT: Listen, I will beat Mr. Shulman to the  
2 punch: Agreed remedy that the plaintiff may apply for; not  
3 that it is the inevitable remedy. So go ahead.

4 MR. MICHAEL: Absolutely.

5 THE COURT: Go ahead, your third point.

6 MR. MICHAEL: Third is time is of the essence, and the  
7 fourth is Theia's mismanagement and fraud. I'll skip over the  
8 timeline, but in the big picture Brevet started advancing money  
9 in 2018. Their prepayment trigger were these MPP, Master  
10 Partnership Program, contracts that were supposed to pay back  
11 that loan in 2018. The same thing in 2019. The same thing in  
12 June 2020, December 2020. Brevet kept giving more time and  
13 more money because it wanted Theia to succeed.

14 Let's get to the first part, the agreed remedy of a  
15 receiver. It says, the purchaser, which is Brevet, empowered  
16 the request --

17 THE COURT: I got it.

18 MR. MICHAEL: This is more or less the same language.

19 THE COURT: I got it.

20 MR. MICHAEL: Even better.

21 Point two: Theia has no money or plan.

22 The case law is clear that when you have a debtor with  
23 mounting obligations and no concrete plan for repayment, that  
24 strongly militates in favor of a receiver. That is exactly the  
25 scenario we're in today, your Honor. Let's walk through the

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1 money we know they received. This isn't a schedule of face  
2 values of the notes. This is money in the door. The three  
3 tranches of funds we advanced: 20, then 5 then 117. Attached  
4 to our June 2020 loan is a schedule of existing note-holders.  
5 We now know that's incomplete, but it lists 203 lenders. You  
6 add up the principal, that's 53 million. We have this newly  
7 discovered plaintiff in Delaware, a Singaporean businessman,  
8 Mr. Ahunai, if I'm saying that right. That's another  
9 10 million. We have an intervenor in this case, 25 million,  
10 Aithre Capital Partners. That's \$230 million in the door.  
11 There's likely more because, as I said, Theia hasn't given us  
12 complete discovery, but suffice it to say there has been  
13 massive influx of cash over the last three years. And What  
14 does Theia have to show for it?

15 Well, their bank accounts show next to nothing. The  
16 most recent statements we have are from July. We are talking  
17 under \$60,000. Theia is earning no revenue. Here is their  
18 most recent P&L they provided to us in the second quarter of  
19 2021 -- no revenue, none whatsoever against almost 6 million in  
20 expenses.

21 To put it simply, Theia is running out of money. We  
22 also know, because Theia admitted in its answer it filed last  
23 week, that Theia has been missing its payroll obligations. We  
24 know of at least seven lawsuits from vendors and lenders. We  
25 know those lawsuits raise serious allegations about its

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1 operations. One of them --

2 THE COURT: Is the airport where the pilot said, gee,  
3 let me test out how the repairs went, and then took off with  
4 the plane, never to return and never to pay the bill. Got it.

5 MR. MICHAEL: Correct. And in that case, Theia didn't  
6 even file an answer. It's in default. So it doesn't deny  
7 those allegations.

8 So, what's its plan to get out? Your Honor, you  
9 mentioned the Gorman declaration. I encourage you to look at  
10 it closely and see if you can find a concrete plan. What we  
11 see is Mr. Gorman saying that Theia has engaged professionals  
12 to chart a course forward.

13 What is that course? I don't see it. If I charted a  
14 course to lose weight and exercise more and eat better, that  
15 doesn't mean I've actually lost any weight or done anything.  
16 Maybe there is no plan.

17 THE COURT: That's the problem I have. I was  
18 following that plan, and it may not be enough just to make a  
19 solemn declaration of intent.

20 Anyway, go ahead.

21 MR. MICHAEL: That's what we have here, is a solemn  
22 declaration of intent to do better. But what's most striking,  
23 your Honor, about that solemn declaration to do better is that  
24 Theia was supposed to do better long ago. In December 2020 in  
25 the third amendment, there was an agreement that Theia was to

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1 develop by January of this year an comprehensive financial  
2 proposal to find --

3 THE COURT: A liquidity plan.

4 MR. MICHAEL: Yes.

5 THE COURT: And you got a one-page document.

6 MR. MICHAEL: Exactly. And so now they've hired all  
7 these people to do what should have been done ages ago. And so  
8 the simple answer from our side is, it's too little, it's too  
9 late.

10 Point three: Time is of the essence. Your Honor  
11 already previewed you got this issue down, so I won't dwell on  
12 it. The birds have to be up in the air and operating by  
13 May 2025. Is that a long time? Is that a little time? Well,  
14 I don't know if it's going to be enough because we have Theia's  
15 own projections that they provided in May of this year showing  
16 that they were going to use all of the allotted time. This is  
17 before they ran out of cash.

18 THE COURT: Right. And they also say that there is  
19 nothing that stops them from going back and seeking an  
20 extension based on the extraordinary circumstance of the  
21 pandemic.

22 MR. MICHAEL: That's very possible, your Honor, but  
23 we're trying to maximum value here, and if we're looking, for  
24 example, for a buyer of this license or someone to finance it,  
25 that's a big role of the dice that's going to affect value,



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1 unquestionably.

2 Now, setting up -- even apart from the timeline, you  
3 know, we have to ask ourselves, how far has Theia gone in  
4 making progress to getting these things up in the air and  
5 operational? And the answer the record reveals, your Honor, is  
6 not very far at all.

7 Theia agreed to produce all contracts for the design  
8 and/or construction of satellites, but produced nothing.  
9 Again, if we go to what Mr. Gorman said, he says in the 84  
10 months since its founding, Theia has developed a plan to  
11 finance, build and launch satellites. That is just as good as  
12 my plan to eat better, my plan to wake up and go to the gym  
13 every morning. That's all it is. We don't have concrete  
14 evidence of progress.

15 Now, the last point: Theia's mismanagement and fraud.  
16 There are four categories of this I will touch on briefly. The  
17 phony billions in master partnership program funds, the looting  
18 by principals, their hidden and unauthorized debt, and the  
19 fraudulent transfer scheme.

20 Let's start with the MPP scheme. For years, Theia had  
21 a practice of raising money, getting extension on the loans  
22 from Brevet by claiming it had billion dollar contract with  
23 with sovereign nations --

24 THE COURT: From an unnamed foreign entity, and then  
25 it was from an unnamed individual.

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1 MR. MICHAEL: Yes.

2 THE COURT: Yes, I got it.

3 MR. MICHAEL: Yeah. And no money has materialized.

4 It seems the whole thing is a gigantic fraud.

5 So, again, your Honor mentioned Mr. Colon's  
6 declaration in your earlier remarks. He gives specific  
7 testimony about specific dates that Theia said money was coming  
8 in. In November 2019, it was 2 billion coming in 30 days. In  
9 March 2020, 18 and a half billion in 120 days. None of this is  
10 disputed. We even have in writing from Theia, Theia has signed  
11 18.5 billion worth of upfront prepaid definitive contracts with  
12 creditworthy counterparties.

13 Well, where is the money, or where are the lawsuits to  
14 enforce the obligations of these counterparties?

15 THE COURT: And this is April 2020 they made that  
16 statement?

17 MR. MICHAEL: Yes, April 2020, so before the loan was  
18 made.

19 And then let's look at what we've learned since the  
20 lawsuit was filed. We have an intervenor, whose counsel is in  
21 the courtroom with us today, who disclosed a balance sheet used  
22 to raise the \$25 million loan, and the dishonesty in this  
23 balance sheet, your Honor, is breathtaking. Theia is claiming  
24 that as of December 2020, it had -- look at note one --  
25 6 billion in revenue in escrow set aside. Your Honor, if Theia

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1 had 6 billion or 5 billion or one billion set aside, we  
2 wouldn't be in this courtroom today.

3 THE COURT: Okay.

4 MR. MICHAEL: We have monthly balance sheets produced  
5 in this litigation where none of this revenue appears. This is  
6 the age-old fraud, your Honor, of keeping two sets of books.

7 Now, another thing we've learned --

8 THE COURT: Pull that slide up again, please?

9 MR. MICHAEL: Sure.

10 You'll see in note 2, 12 and a half billion due in 120  
11 days. 120 days from December 2020, that time has long passed.  
12 We haven't seen a penny of this money.

13 THE COURT: Go ahead.

14 MR. MICHAEL: Another thing we learned in this  
15 litigation, we found on the public dockets from the District  
16 Court in Delaware, a Singaporean businessman, whose existence  
17 we didn't know, and whose existence should have known disclosed  
18 when we first loaned the money, filed a complaint. Attached to  
19 his complaint is a letter from February 2020 where he's being  
20 told by Theia: We presently have 14 and a half billion of  
21 signed prepaid contracts and are finalizing two more.

22 Theia just recently filed its answer in that complaint  
23 and admitted the authenticity of this letter, this letter,  
24 which, of course, is a gigantic fraud.

25 A third example.

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1 THE COURT: Put that back up, please.

2 MR. MICHAEL: Sure. Sure.

3 THE COURT: Go ahead.

4 MR. MICHAEL: The next one you got to feel  
5 particularly bad for is an anesthesiologist in Rhode Island  
6 named Robert Chin. Robert Chin loaned a hundred thousand  
7 dollars to Theia, okay? So, not some big, sophisticated  
8 financial firm, and this is what he was told when he loaned his  
9 money. He was told there was private sector contracts that  
10 were going to produce revenue in 2020. This is revenue we've  
11 never seen. And then, again, this is now starting to sound  
12 familiar: MPP contracts with sovereign nations around the  
13 world, \$16 billion prepaid income in 2019 and 2020, unlocked in  
14 tranches through 2020. If these tranches ever existed, we've  
15 never seen them be unlocked.

16 And this isn't the first time this MPP mystery has  
17 come up in litigation. You may recall, your Honor, there is  
18 some discussion in the papers of the trademark litigation that  
19 gave rise to Theia trying to do business under a different  
20 name. Well, in that trademark litigation on the public dockets  
21 in the Eastern District of Pennsylvania, the plaintiff, another  
22 entity that did business as Theia, found documents that  
23 appeared to discuss major commercial transactions, it looks  
24 like the MPP contracts, but Theia hadn't produced the  
25 contracts. We have a special master saying, okay, you've got

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1 to produce the contracts. And the question arises, what is  
2 Theia hiding? What is the real story? We don't know it. What  
3 we do know is there's no money.

4 Now, a separate category of wrongdoing is the looting  
5 by Theia's principals. The loan documents prohibit  
6 distributions, but that didn't stop the two shareholders John  
7 Gallagher and Erlend Olson, from taking out \$14.2 million. We  
8 just yesterday received accounting documents that corroborate  
9 this figure. The figure we calculated from bank statements is  
10 slightly lower, but it's a staggering sum to be taken out from  
11 a company that's making no money.

12 THE COURT: Now, Mr. Olson was CEO; he is not any  
13 longer. What is his position, or you don't know?

14 MR. MICHAEL: I don't know. I don't believe he is the  
15 CEO, but I know that he and Mr. Gallagher remain the  
16 shareholders, and I know by statute because the entity holding  
17 the license isn't allowed to transfer the license even by  
18 operation of a corporate change in control. That's generally  
19 been interpreted to mean the shareholders have to state who  
20 they are. So, as far as we know, these are the two guys who  
21 have been running the show from the start, calling the shots,  
22 and feathering their own nest.

23 THE COURT: Now, this 5.7 to Gallagher, does that  
24 include the money to Leeds that was funneled through  
25 Gallagher's law firm allegedly?

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1 MR. MICHAEL: I'm glad you asked that. It does not.  
2 We just subtracted it. We took the Gorman declaration numbers  
3 at face value and said, okay, take out the three and change  
4 that allegedly ultimately landed to Mr. Leeds. Let's just  
5 subtract those. So this is net of that. This is what went to  
6 Gallagher, went to his law firm, and went to his consulting  
7 firm. And you've got to wonder why these two guys who are  
8 running this business have put consulting firms between  
9 themselves and Theia to be paid. But that's what they did.

10 And so at the same time as we hear from Theia all  
11 these complaints about how the money that Mr. Leeds apparently  
12 received was the straw that broke the camel's back and caused  
13 all of this calamity, their own principals were taking out  
14 multiples of what Mr. Leeds did.

15 The third category of wrongdoing is hidden and  
16 unauthorized debt. This is pretty standard in loan agreements,  
17 your Honor, to allow only for debt that predates the loan, debt  
18 that's disclosed, that's existed indebtedness, plus permitted  
19 new indebtedness on terms and conditions acceptable to the new  
20 lender; in this case, Brevet. Again, the point here is you're  
21 going to have a secured lender advancing a bunch of money, you  
22 need transparency as to what debt is on the books today, and  
23 you need to approve debt coming on the books tomorrow.

24 Well, Theia didn't honor either of these obligations.  
25 And we know that only because we have stumbled upon other

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1 debtors in the course of this litigation: The plaintiff in  
2 Delaware, and then three entities who I believe are affiliated  
3 with one another, but who have intervened in this case. They  
4 described debt that predated June 2020 but isn't on the  
5 disclosure schedule. And there are likely others, your Honor.  
6 And the reason I say there are likely others is we have a  
7 stipulated so-ordered order in this case where Theia was  
8 supposed to produce, I believe by September 1, a schedule of  
9 note-holders updated through the present. They never produced  
10 that.

11 THE COURT: By September 1?

12 MR. MICHAEL: I believe that's the date on the  
13 so-ordered stipulation. But here we are towards the end of  
14 October, we have nothing. Clearly -- I shouldn't say clearly,  
15 but -- all signs point to the fact that there are other people  
16 out there; others like Dr. Chin, the anesthesiologist. Who  
17 knows? Friends and family, people who received these  
18 promissory notes or -- excuse me -- issued these promissory  
19 notes in exchange for money. We can't even get handle on what  
20 debt is out there.

21 The other side of the coin is what I'll call the new  
22 debt after the Brevet loan. Again, we learned about Aithre  
23 Capital Partners and we learned from three intervenors who  
24 showed up in this case and described loans that occurred after  
25 June 29, 2020. We should have been in the position to approve

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1 those, but we weren't. And, again, there are likely others  
2 because Theia hasn't complied with its discovery obligations.

3 THE COURT: Let me ask you on this. Under the loan  
4 agreements, are they required to notify you in a particular  
5 form? How does this work? So there's this contention that --  
6 well, as I understand, Mr. Leeds was retained by Theia to come  
7 up with non-Brevet financing sources, and apparently there is  
8 the financing from -- I don't know how it's pronounced --  
9 Aithre Capital Partners.

10 MR. MICHAEL: Right.

11 THE COURT: And as I read the papers, the claim is,  
12 well, Mr. Leeds knew, Mr. Leeds, Theia's consultant; and since  
13 he used to be a consultant to Brevet, that, therefore, you're  
14 on notice. Is there a particular manner in which you are to be  
15 notified of new debt?

16 MR. MICHAEL: Well, I don't believe there's particular  
17 manner, but the contract language, which I'll put it back up,  
18 is on terms and conditions acceptable to Brevet. And there are  
19 a number of problems with Theia pointing to Mr. Leeds as  
20 evidence that the terms and conditions were acceptable to  
21 Brevet.

22 Number one, they point to an email that doesn't  
23 mention Aithre; it doesn't mention the particular transaction  
24 at all. He just says, if the lawyers say we can raise money  
25 without telling Brevet, that's okay with me. So, he's not even



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1 expressing his own opinion. That's number one.

2 Number two, this email is sent two weeks after a  
3 letter from Mr. Gallagher's own law firm saying that no -- to  
4 Aithre saying no consents were needed to do the transaction.  
5 That letter is itself fraudulent and is before the email that  
6 they're using to say the debt was permitted.

7 Number three, the idea that Mr. Leeds can be deemed an  
8 agent or, you know, the voice of Brevet in this time period  
9 when he's being paid 30,000 a month by them, not by us, is,  
10 respectfully, your Honor, ridiculous. He was working for  
11 Theia. He was visiting Theia.

12 THE COURT: Did you pay him anything -- I think on or  
13 about July 10, you paid the invoice for June's services to  
14 Leeds.

15 MR. MICHAEL: Precisely.

16 THE COURT: Did you pay anything after that date to  
17 Leeds?

18 MR. MICHAEL: Not consulting fees. He was paid his  
19 return on some personal money he had put in in the 2018 and  
20 2019 debt. So, the '18 and '19 debt was retired by being  
21 rolled into the 2020 debt, which was \$200 million. And so  
22 Mr. Leeds was entitled to a return on that, and he was paid out  
23 for that. But no consulting fees. He's not on the payroll.  
24 He was not an employee. He wasn't coming to the office. And  
25 you add on top of that the fact that he sent multiple emails in

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1 this exact time frame saying I don't speak to Brevet.

2 THE COURT: He said, "I don't speak for Brevet."

3 MR. MICHAEL: Precisely. Precisely.

4 THE COURT: Yes.

5 MR. MICHAEL: And I think the evidence is pretty  
6 powerful, your Honor, that this was not an accidental  
7 concealment of the debt. The sheer number of these incidents  
8 is proof enough that we're talking about a deliberate pattern.  
9 And then you add to that the fact that the Aithre debt was done  
10 via newly created bank account never disclosed to Brevet. The  
11 deal documents require Theia to promptly disclose any new  
12 accounts, but Theia didn't do that. So, why would Theia create  
13 a new account just for this one loan? Well, obviously, to  
14 conceal it from Brevet.

15 And the dishonesty continued. We learned about the  
16 Aithre loan. My partner, Mr. Agusti, wrote a letter to  
17 Aithre's counsel. Aithre predictably emails Theia and says, in  
18 essence, what is going on? And the response from Mr. Olson:  
19 We had permission in writing for the Bulltick deal, no question  
20 about it. Okay?

21 THE COURT: Woa, woa, woa, woa. Who is Gonzalo?

22 MR. MICHAEL: Gonzalo is somebody affiliated with  
23 Aithre, the entity that loaned \$25 million to Theia in January  
24 of this year without our knowledge. So, Mr. Gil, Gonzalo Gil,  
25 writes to Mr. Olson, one of the two principals of Theia, and

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1 says -- I'm going to quote his words here: "We need to  
2 understand what's going on."

3 And Mr. Olson's answer that they had permission in  
4 writing, and there was no question about it, it's a lie, plain  
5 and simple. There's no permission in writing. The closest  
6 thing they could come up with, like I said, was this email from  
7 Mr. Leeds, which was after the fact, didn't mention the loan,  
8 isn't from Brevet. They didn't have permission for the deal,  
9 but they did it anyway.

10 And the final one, which I'll just talk about briefly  
11 is the scheme to transfer assets out of the reach of creditors.  
12 This was ostensibly occasioned by this trademark litigation  
13 where a software company called Theia was suing the defendants  
14 in this case.

15 THE COURT: Instead of changing names, they -- or  
16 using a doing business name, they incorporated two entities,  
17 but the stipulation you entered into in this case, stipulation  
18 and order would prevent any transfers, right?

19 MR. MICHAEL: It would prevent any transfer today.  
20 But I think for the question for your Honor is should a  
21 receiver be appointed. And a subsidiary question that goes  
22 into that is, can you trust the existing management? And if  
23 the existing management team are the type of people that would  
24 secretly create new entities -- we went out and found them  
25 because we did our own searches -- and then would say in

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1 interrogatory response they were going to transfer business to  
2 the new entities, those people should not continue to have the  
3 keys. These why it's relevant. It's true, your Honor, they  
4 didn't complete or pull off the scheme to completion, but they  
5 certainly tried.

6 Now, let me briefly address Theia's two primary  
7 defenses. The first one we've already hinted at: Let's blame  
8 everything on Robert Leeds. Theia's theory is that Mr. Leeds  
9 was acting for Brevet to sabotage Theia by failing to raise  
10 money for Theia and paying himself too much. There are a  
11 number of obvious flaws to this theory. First, he is  
12 irrelevant to the receiver issue. Nobody is trying to make  
13 Mr. Leeds the receiver or to have him have any ongoing role  
14 whatsoever.

15 THE COURT: Indeed, presumably, if a receiver  
16 appointment looks like the kind of orders that I've seen in  
17 other cases, the receiver could sue leads.

18 MR. MICHAEL: Exactly. Exactly. Now, the cause of --

19 THE COURT: Can sue Gallagher and Olson and presumably  
20 even Brevet.

21 MR. MICHAEL: Presumably.

22 THE COURT: If he had a good cause of action against  
23 somebody.

24 MR. MICHAEL: Absolutely. Absolutely.

25 So, let's keep in mind, your Honor, the cause of

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1 Theia's predicament at its core is, it never came through with  
2 the MPP money it had been promising to us and everybody else  
3 for years and years and years. There's no allegation that  
4 Mr. Leeds had anything to do that. So, the reason Theia is in  
5 a hole is not because of anything Mr. Leeds said or did. It's  
6 because Theia was making out-sized promises that it never came  
7 through on.

8 We also have to keep in mind that while Theia  
9 complains mightily that Mr. Leeds was paid 4 million, Theia  
10 chose to pay him those sums. Most of that money went through  
11 the bank account of the law firm of John Gallagher, Theia's  
12 primary shareholder. So, whatever else you may say about these  
13 payments, they were approved at the highest levels of Theia.  
14 There's also a small fraction of what Mr. Gallagher himself and  
15 his co-conspirator, Mr. Olson, extracted from the company.

16 At its core, your Honor, Theia's problems run much  
17 deeper than the alleged overpayment of one consultant. Even if  
18 we assume that Mr. Leeds wasn't entitled to the money he  
19 received, Theia's attempt to lay that issue at the feet of our  
20 client, Brevet, is, in a word, ridiculous. Why? Because that  
21 money was our collateral. Why in the world would Brevet plot  
22 with Mr. Leeds to have Brevet's own collateral go out the door?  
23 It doesn't make any sense. Okay? And then on top of that we  
24 have the emails I referenced, that your Honor is clearly aware  
25 of, where Mr. Leeds is saying again and again, "I don't speak

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1 for Brevet."

2 Now, I want to take just one moment to talk  
3 specifically about the theory that Mr. Leeds is the one  
4 responsible for Theia being in so much debt in the first place.  
5 The theory is that Theia is depending on Mr. Leeds to raise  
6 money to pay off the 2018 debt and the 2019 debt, so this is  
7 the first 25 million our client advanced.

8 Mr. Leeds was unable to raise the money, the theory  
9 goes, and so Theia was forced, forced to take more of our  
10 money, 117 million more of our money. Your Honor, this is  
11 preposterous. It's preposterous because Theia didn't have to  
12 take on more debt. It could have said no. If its technology  
13 were so valuable, it could have borrowed money from others. If  
14 the MPP money, if all these deals with foreign countries were  
15 real, they could have paid off everyone.

16 The idea that Theia was solely dependent on the  
17 Mr. Leeds to take care of that first 25 million is not  
18 supported by a single document in the record. There's no  
19 email. There's no contract that says, "Rob, Mr. Leeds, we're  
20 depending on you to raise money to retire this debt." Not one.  
21 In fact, the original deal documents greatly undermine this  
22 characterization of the facts.

23 Let me just show you two. Let's start with the 2018  
24 loan. The deal documents refer explicitly to the MPP money  
25 that I've talked about again and again this morning. When that

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1 money comes in, Theia is required to prepay the debt. So, this  
2 undermines any suggestion that Theia was reliant on Mr. Leeds.  
3 In fact, Theia was supposed to get the MPP money in the door.  
4 Second, the connection is even more explicit the following year  
5 in 2019 in the deal documents. What I put up on the screen,  
6 your Honor, is Theia's own board resolutions. They described  
7 the loan as a bridge to closing by Theia with an MPP country of  
8 an MPP contract.

9 So, by Theia's own admission, it's not relying on  
10 Mr. Leeds to come up with some borrower to take out this loan;  
11 it's taking out a bridge loan because this MPP money is  
12 supposed to come in, this MPP money that we all know now is a  
13 gigantic fraud.

14 Now, the second defense is that there are new sheriffs  
15 in town. Your Honor referenced some of them. Theia says it's  
16 hired new consultants that will fix everything. This is no  
17 answer to the problem. To begin with, this is a road we've  
18 been down before with Theia promising again and again that a  
19 turnaround was under way. There's been a merry-go-round of  
20 advisors coming in and out and no one has solved the issues;  
21 four law firms, multiple financial advisors, management  
22 shuffles. And even at one point Theia said, "We brought on  
23 board Tom Ridge." Tom Ridge, who used to be the governor of  
24 Pennsylvania and Homeland Security Director, and he was among  
25 many other people on the merry-go-round who was going to usher

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1 in a new era of change.

2 THE COURT: As a member of the board of directors.

3 MR. MICHAEL: As a member of the board of directors.

4 THE COURT: But he's not on the board of directors.

5 MR. MICHAEL: Exactly. We have an email to my  
6 partner, Mr. Agusti, sitting right here from Theia confirming  
7 he's on the board. Well, there's sworn interrogatories listing  
8 current and former board members that don't list him at all.

9 THE COURT: Who is Eugene Sullivan?

10 MR. MICHAEL: He is a former judge and at least at one  
11 point was the general counsel, maybe still is.

12 THE COURT: Of Theia?

13 MR. MICHAEL: Of Theia, yes. So, all appearances are  
14 that this Tom Ridge business was just another fiction.

15 Even if we assume -- you can imagine, of course,  
16 Brevet's skepticism when there's been this constant cycle of  
17 advisors who have accomplished nothing.

18 THE COURT: Put that back up on the screen, please.

19 MR. MICHAEL: Sure.

20 THE COURT: Thank you.

21 MR. MICHAEL: So let's take Theia at its word that we  
22 have new consultants in town. They're imminently qualified.  
23 Okay, they're great and wonderful turnaround people. That  
24 still doesn't solve the problem because there's no proof they  
25 have authority or control to actually do anything. You've got



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1 Olson and Gallagher in charge who can ignore their advice and  
2 fire them.

3 And there's also, your Honor, an implementation  
4 problem. How in the world will these consultants get anything  
5 done when they have no money? Theia supplies no answer to this  
6 problem. We just got midday yesterday redacted versions of the  
7 agreements with these consultants. It's not going to surprise  
8 you, your Honor, that their role is to provide advice. That's  
9 it. Advice that can be ignored. You'll see in the Alix  
10 Partners one, for example, they can be fired. So how does this  
11 solve the problem, or how does this give us any comfort that  
12 this calamity we're in will be solved? It gives us no comfort  
13 whatsoever.

14 The last thing I'll say, your Honor, is let's contrast  
15 that proposal, let these consultants who can be ignored or  
16 fired fix it with what a receiver would accomplish.

17 First, the receiver will have the authority to get  
18 things done.

19 Second, the receiver process will be transparent. As  
20 it stands, it's like pulling teeth to get information from  
21 Theia. What Theia's consultants are doing is completely opaque  
22 to us. We don't know if they're doing anything today. We  
23 don't know if they're being paid, as your Honor raised.

24 Third, while Theia complains about a receiver  
25 destroying its business, the receiver will be an eminently

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1 qualified professional who can decide what should be sold, what  
2 order it should be sold in, what's the best way to preserve  
3 value. We shouldn't just assume that the receiver is going to  
4 go in and blow up the place.

5 THE COURT: Obvious question. You've made out a case  
6 that in your view the defendant cannot pay their debts when  
7 due, correct?

8 MR. MICHAEL: Correct.

9 THE COURT: So why doesn't your client file an  
10 involuntary petition for bankruptcy?

11 MR. MICHAEL: That's a good question. We're a secured  
12 creditor, so we can't. You need unsecureds to do that.

13 THE COURT: I didn't realize that was the law, but  
14 okay.

15 MR. MICHAEL: That's correct. And we'd be happy to be  
16 doing this in front of a bankruptcy court, but to date they've  
17 resisted.

18 THE COURT: Okay. Certainly, however, Theia has that  
19 option also.

20 MR. MICHAEL: Theia has that option, absolutely.

21 THE COURT: Okay.

22 MR. MICHAEL: Just to pick up on this last point, so  
23 the receiver can do things smartly, can preserve value, but it  
24 should be emphasized that the path that guarantees failure,  
25 that guarantees value destruction is the status quo. The

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1 status quo is untenable.

2 Fourth, while Theia complains about wrongdoing by  
3 Mr. Leeds and others, those claims can be investigated by a  
4 receiver and pursued exactly as your Honor mentioned a moment  
5 ago.

6 Finally, there have been a lot of accusations flying  
7 back and forth in this case; that a receiver will not be a  
8 partisan for this side of the table or that side of the table.  
9 He or she will be an independent fiduciary charged with  
10 maximizing value. We are in a situation, your Honor, that  
11 desperately cries out for order to be restored, and restored  
12 quickly, and by someone with credibility to do it, and to do it  
13 fairly.

14 THE COURT: It would have to be somebody with  
15 clearance though, wouldn't it?

16 MR. MICHAEL: Quite possibly, yes. So, we have a  
17 couple of names we've already shared with Theia, eminently  
18 qualified people. We're happy to provide more, but there's no  
19 shortage of people with receivership experience, with telecom  
20 experience, who can come in and have the credibility to do this  
21 right. And that, we respectfully submit, is what the Court  
22 should order.

23 THE COURT: Thank you much very much.

24 Mr. Shulman.

25 MR. SHULMAN: Good morning, your Honor.

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1 THE COURT: Good morning.

2 MR. SHULMAN: So, there are a lot of things that Theia  
3 and Brevet agree upon, but I would like to actually start,  
4 because this may make this a lot shorter, with your Honor's  
5 very last question. And, that is, why are we here? We should  
6 really be down in Bowling Green in front of the bankruptcy  
7 court because the bankruptcy court has the ability to deal with  
8 Brevet, to deal with Theia, to deal with all the note-holders,  
9 to deal with all the issues --

10 THE COURT: So let me flip that on you. Why haven't  
11 you filed?

12 MR. SHULMAN: That's an excellent question, your  
13 Honor.

14 THE COURT: Everybody is complimenting my questions.  
15 Let's see how they do with their own answers.

16 MR. SHULMAN: We have not filed yet, but, in fact, we  
17 believe the only path for anybody getting their money back is  
18 to sell this license, and sale of this license will inevitably  
19 require some type of bankruptcy proceeding. Because nobody is  
20 going to buy this license with the cloud that Brevet has now  
21 put over this company and over this license. So the path where  
22 we are all likely going to end up is in bankruptcy.

23 We are trying to figure out how to do that in the way  
24 that optimizes things for the company, for Brevet. We've got  
25 to get funding its process. I think it's fair to say that

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1 within 60 days, we will be down in some type of bankruptcy  
2 proceeding, either because we found a buyer or we found a  
3 funder or because we didn't find all of that, and we just need  
4 to move forward.

5 There is no company today. There's no money being  
6 spent in any meaningful way. There's no assets that are being  
7 diminished. All there really is, is a license and a business  
8 plan. That license is not going anywhere. There's no  
9 irreparable harm here. That license cannot be transferred  
10 without FCC approval. So, there's no real need for a receiver  
11 because there's no money that's going to disappear. Yes, there  
12 are some airplanes and there are some computers and things like  
13 that, but that's not getting anybody to first base.

14 THE COURT: Let me ask you, Mr. Shulman -- and you can  
15 educate me on this, but it would seem to me that the  
16 appointment of a receiver would not preclude the filing of a  
17 bankruptcy petition. In fact, the receiver might conclude that  
18 that's the best way to go, I assume, right? Correct? There's  
19 nothing inconsistent with a receiver being appointed and the  
20 filing for bankruptcy that I'm aware of, but happy to be  
21 educated otherwise if you know of something that I don't know.

22 MR. SHULMAN: Your Honor, I think those are two  
23 different paths, right?

24 THE COURT: They are usually two different paths, I  
25 agree with that. But the point is if you had a receiver, it

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1 would not foreclose the -- well, certainly, you could be put in  
2 involuntarily, but presumably the receiver would have the power  
3 to conclude that that was the better path.

4 MR. SHULMAN: The receiver may conclude that. The  
5 company can conclude that without a receiver. The company  
6 likely will need to go into bankruptcy no matter what. Now  
7 there is a very practical problem over here. One of the  
8 problems is, who's paying for all of this? The company has no  
9 money -- zero. The company has less than 150 or 200,000 in the  
10 bank, and that keeps the electric going and pays the rent,  
11 maybe.

12 THE COURT: This does not sound good for Fried Frank.

13 MR. SHULMAN: Your Honor, I appreciate you looking  
14 out.

15 So the company does not have any money. So, who is  
16 paying for this receiver? Who is paying for this bankruptcy?  
17 That is what we're trying to figure out.

18 A receiver only does half the job. A receiver can  
19 come and figure out how to sell this license, but what does it  
20 do with the money? Does it give it to Brevet? Does it give it  
21 to the note-holders? What does it do with the money? Are we  
22 going to litigate that in front of your Honor? This is going  
23 to have to end up in some type of bankruptcy because Theia has  
24 claims against Brevet. Brevet has claims against Theia.  
25 Everybody's got claims against Leeds, the note-holders, the

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1 intervenors. I mean, your Honor has seen the pleadings. So,  
2 bankruptcy is almost inevitable given all of these problems.

3 All we need is 60 days to be able to get there, which  
4 will probably take that much time to find a receiver and find a  
5 way to pay the receiver and all of that. That's all we need.  
6 We're asking for a 60-day stay to be able to get this to  
7 bankruptcy in an orderly fashion; frankly, to work with Brevet  
8 to get in this to bankruptcy in an orderly fashion, because  
9 that is the only solution that gets -- that has the most likely  
10 probability of getting everybody paid.

11 If a receiver comes in, it's going to be harder to  
12 find a buyer. Everything becomes a mess. There's a lot of  
13 money being spent. And ultimately we all end up at Bowling  
14 Green or some bankruptcy court. That is why we think that a  
15 receiver -- separate and apart from we don't think they're  
16 legally entitled to it. Yes, there are issues at this company.  
17 I'm not going to stand up or sit down, as it may be now, and  
18 tell your Honor there are no issues. There are issues.

19 THE COURT: That sounds like a rather severe  
20 understatement, but I take it, I take it for what -- as you  
21 intend it.

22 MR. SHULMAN: But what's the plan for? What's the  
23 receiver going to do? This is all going to end up in the same  
24 place. So, why are we going through this process when we all  
25 kind of know what's going to happen, and we think we can get

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1 there within 60 days. No harm is going to come to Brevet in  
2 the next 60 days. This license is sitting there. Nobody can  
3 transfer it. I haven't heard them articulate what is the great  
4 urgency that they come running to the court for relief -- if  
5 they want to go find a buyer? Find a buyer. We'll be happy to  
6 talk to them. What is the great harm that is going to happen  
7 that requires the machinations of a receiver, finding a  
8 receiver, paying for a receiver, when we will be at a place  
9 that can actually -- the bankruptcy courts are designed for  
10 this type of process; that's what they do. That's where this  
11 should end up, and all we're asking for is 60 days to get  
12 there.

13 I'm happy to go through some of the legal arguments,  
14 but I think this is really what the question is, you know, is  
15 this really the best path forward or is waiting 60 days, let's  
16 just stay this case for 60 days. We'll come back here. If we  
17 are not in bankruptcy yet, your Honor, we will have a very good  
18 reason as to why we're not in bankruptcy.

19 THE COURT: Thank you.

20 Let me hear from Mr. Michael.

21 MR. MICHAEL: Thank you, your Honor.

22 The first thing I would say is, if Theia wants to file  
23 for bankruptcy, they should. We're first hearing about this  
24 today, and Theia's position before today was no bankruptcy, no  
25 way, no how. They were emphatic, okay?



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1           And Mr. Shulman question of, what's the harm of  
2     waiting 60 days. My first response would be, turn it around  
3     the other way. What's the harm of getting a receiver going?  
4     We're under some time pressure, but what a receiver can do --  
5     the receiver will be paid from the estate's assets, but if  
6     they're short term need --

7           THE COURT: Say that again. The receiver will be paid  
8     through?

9           MR. MICHAEL: From the assets the receiver covers, but  
10    short-term payments can come from Brevet. The receiver can be  
11    paid. That's an issue we can solve. We're not talking about a  
12    huge amount of money, just the fees of the receiver. But the  
13    receiver will be someone well-equipped to find a buyer, but the  
14    other thing the receiver can do that's important is secure our  
15    collateral. A big part of the collateral in addition to  
16    license are these planes that have these expensive sensors on  
17    them. Planes can fly away. Theia has already shown it's  
18    willing to fly planes away from obligations.

19           We need someone who can get ahold on this and get  
20    ahold of the information and impose some order. So, if a  
21    receiver spends a month or two getting the house in order and  
22    then they file for bankruptcy, fine. What's the harm?

23           And then my second response to what's the harm of  
24    waiting is, you know, this has been -- this whole matter has  
25    been rope-a-dope between Brevet and Theia again and again and

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1 again, and more delay, your Honor, sounds like just more  
2 stalling. And, you know, May 2025 may sound like a long way  
3 away, but with each of these delays, it becomes more and more  
4 challenging to find a buyer that's going to have to from  
5 scratch get these satellites up in the air and operating. The  
6 asset is much more valuable and much more attractive if buyers  
7 have a longer window. Now, I understand the FCC can extend it.  
8 But this game of the delaying and the stalling has gone on long  
9 enough. The receiver should be installed and installed soon to  
10 get a handle on this catastrophe, I would say, at the company.

11 THE COURT: Thank you. All right. So what do I  
12 think? This is what I think. Taking both sides at face value,  
13 you know, I have heard from Mr. Shulman today, the only path  
14 forward is selling the license, the company has no money, and  
15 we expect to file for bankruptcy in 60 days.

16 This is what I propose: You have principals, but you  
17 need to get together very quickly. I don't know if very  
18 quickly is this afternoon or very quickly is tomorrow morning,  
19 but that kind of very quickly. And see if there is comfort  
20 that can be given to Brevet with regard to the collateral, for  
21 example, the planes, and what can be done there, punishable by  
22 contempt. Receivers order things. Receivers go to judges to  
23 order things. This is, in essence, a shortcut. Let's see what  
24 can be negotiated, what commitments can be reduced to writing  
25 and ultimately reflected in an order.

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1           In the meantime, the application for the appointment  
2 of a receiver would remain pending. It's pending. Nothing is  
3 stayed. The case isn't stayed. The motion isn't stayed. But  
4 there will be an interim package of protection, and that  
5 protection is good to have if I issue an order appointing a  
6 receiver until the receiver takes office. It's also good to  
7 have if there is going to be any wait for 60 days for a  
8 bankruptcy petition to be filed. It's good in either event.  
9 So that should be nailed down.

10           But you actually -- listen, as a judge, I like things  
11 to proceed orderly; that you all have your discussions, and the  
12 discussions have taken place last week, and you've explored all  
13 possibilities. Sometimes life doesn't work that way. So, some  
14 new things were said today. I hope you understand that I'm on  
15 top of this case and the facts of this case. I'm not going  
16 anywhere, I hope. And so anything -- I'm in a position to act  
17 quickly any which way, any which way.

18           But this is what I want you to do, is work between now  
19 and I think it's reasonable to say noon on Tuesday on an order,  
20 and if you need more time -- both sides. Not one side says "I  
21 need more time," but both sides say "we agree we could benefit  
22 from a little more time," then I will extend the Tuesday noon  
23 deadline. If the two sides are in disagreement and one side  
24 says, "As far as I'm concerned, we're done here," and the other  
25 side says, "I'd like to talk some more over the coming days and

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1 weeks," that's not going to be enough. If I know that there  
2 isn't interim protection in place, that may affect the next  
3 steps I take. If there are interim protections in place, that  
4 may affect the next steps I take. And that's all I really need  
5 to say for today's purposes.

6 Thank you for your hard work on all of this. I want  
7 to say for the record I've read all of the intervenor's  
8 submissions.

9 Is there anything further from the plaintiff?

10 MR. MICHAEL: No, except to say thank you, your Honor,  
11 for your time today.

12 THE COURT: Anything further from the defendant?

13 MR. SHULMAN: Thank you, your Honor.

14 THE COURT: Thank you all very much. And what you may  
15 do is email me by noon on Tuesday to the chambers email box,  
16 and then we'll see where we are from there. Thank you all very  
17 much.

18 (Adjourned)